

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

SCRUGGS LAW FIRM, P.A.
AND RICHARD F. SCRUGGS

PLAINTIFFS

V.

3:08CV73-D-A

ZUCKERMAN SPAEDER LLP

DEFENDANT

MOTION TO COMPEL DEPOSITION OF RICHARD F. SCRUGGS

COMES NOW Zuckerman Spaeder LLP (hereinafter "Zuckerman Spaeder"), by and through counsel, and files its motion to compel the deposition of Richard F. Scruggs (hereinafter "Scruggs"), in the above matter as follows:

I.

Scruggs and Scruggs Law Firm, P.A. (hereinafter "Scruggs Firm") filed their complaint for declaratory relief against Zuckerman Spaeder on July 3, 2008. The complaint seeks a declaratory adjudication that Scruggs and Scruggs Firm do not owe Zuckerman Spaeder for legal fees and expenses. See Docket No. 1.

II.

On July 15, 2008, Zuckerman Spaeder voluntarily appeared in this matter, responded to the complaint for declaratory relief, and filed a counterclaim seeking recovery of its fees and expenses from Scruggs and Scruggs Firm. See Docket No. 4.

Zuckerman Spaeder also submitted its pre-discovery disclosure statement with the filing of its response and counterclaim. See Docket No. 5.

III.

On July 15, 2008, counsel for Zuckerman Spaeder contacted counsel for Scruggs and Scruggs Firm by telephone to conduct a Rule 26(f) attorney conference in advance of conducting discovery. This conference was confirmed through correspondence. See correspondence dated July 15, 2008, attached hereto as Exhibit "A" and incorporated herein by reference.

IV.

Counsel for Scruggs and Scruggs Firm denies that this telephone conference constituted a Rule 26(f) attorney conference. Counsel for Zuckerman Spaeder has offered to conduct any further necessary conferences at any time on numerous occasions. See electronic messages dated July 16, 2008, and July 23, 2008, attached hereto as Exhibit "B" and incorporated herein by reference. Even if this Court determines that the conference between counsel herein was insufficient as a Rule 26(f) conference, the Court should, per Rule 26(d) of the Federal Rules of Civil Procedure, authorize the discovery relief requested herein for the reasons set forth below.

V.

On July 16, 2008, Zuckerman Spaeder properly noticed the deposition of Scruggs for July 28, 2008, at 1:30 p.m. in the offices of counsel for Scruggs and Scruggs Firm. See Docket No. 6.

VI.

Counsel for Scruggs and Scruggs Firm has indicated that neither he nor Scruggs will appear for the noticed deposition. See electronic message dated July 23, 2008, attached hereto as Exhibit "C" and incorporated herein by reference.

VII.

Counsel for Zuckerman Spaeder has worked diligently with counsel for Scruggs and Scruggs Firm in an effort to accommodate schedules and take the deposition before Scruggs is incarcerated¹ and the taking of his deposition becomes procedurally difficult and unnecessarily expensive to Zuckerman Spaeder.

VIII.

Counsel for Zuckerman Spaeder has conferred in good faith with counsel for Scruggs and Scruggs Firm in an effort to resolve this potential discovery dispute. See electronic messages dated July 23 and 24, 2008, attached hereto as Exhibit "D" and incorporated herein by reference. Pursuant to the

¹ It is the understanding of Zuckerman Spaeder that Scruggs will be incarcerated on August 4, 2008, in Ashland, Kentucky.

requirements of Rule 37.1 of the Uniform District Court Rules, a good faith certificate is attached hereto as Exhibit "E" and incorporated herein by reference.

WHEREFORE, Zuckerman Spaeder seeks an order compelling Scruggs to appear for his deposition as noticed on July 28, 2008, or some other convenient date in advance of Scruggs' August 4, 2008, incarceration.

RESPECTFULLY SUBMITTED,

ZUCKERMAN SPAEDER LLP,
Defendant/Counterplaintiff

By: /s/ John G. Wheeler
JOHN G. WHEELER
Mississippi Bar No. 8622

OF COUNSEL:

MITCHELL, MCNUTT & SAMS, P.A.
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662-842-3871

CERTIFICATE OF SERVICE

I, John G. Wheeler, attorney for the defendant/counterplaintiff, Zuckerman Spaeder LLP, do hereby certify that I have this day electronically served a true and correct copy of the above and foregoing MOTION TO COMPEL DEPOSITION OF RICHARD F. SCRUGGS on counsel of record as follows:

J. Cal Mayo, Jr., Esq.
Pope S. Mallette, Esq.
Mayo Mallette, PLLC
2094 Old Taylor Road
5 University Park
Post Office Box 1456
Oxford, Mississippi 38655

DATED, this the 25th day of July, 2008.

/s/ John G. Wheeler
JOHN G. WHEELER